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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3169 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ORIENTAL INSURANCE CO. LTD.

Versus

LAXMAN ATMARAM VAGHELA

Appearance:

1. First Appeal No. 3169 of 2001

MR RK MISHRA for Petitioner No. 1

MR SANJAY PATEL for Respondent No. 1

MS NIRALI B MUNSHI for Respondent No. 2

NOTICE SERVED for Respondent No.3

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 24/12/2001

ORAL JUDGEMENT

1. Heard Mr.Mishra, learned advocate for the appellant - insurance company, Mr.Sanjay Patel, learned advocate who appeared for respondent No.1 - original

claimant and Ms. Nirali Munshi, learned advocate for the respondent No.2. Mr.Patel, learned advocate appearing for the respondent No.1 has undertaken that he will file vakalatnama on behalf of his client opponent No.1. Mr.Patel appearing for the contesting respondent and by consent of all, the appeal is taken up for final hearing.

2. In view of the fact that earlier on behalf of the appellant insurance company an application being Civil Application No.12294 of 2001 was filed praying for seeking direction from this Court by annexing certain documents by highlighting about the claim application filed in which the vehicle scooter was involved belonging to a person working in the Court and it is a case of the insurance company that the said scooter was involved 4 to 5 times prior to the accident within a period of six months and on behalf of the insurance company an application was filed before the tribunal about the investigation being carried out by the insurance company and one of the application was also forwarded in favour of Vigilance Cell of this Court. It is a case of the applicant that no damage is caused to the scooter in an accident which has involved about 4 to 5 times prior to the accident in respect of each accident the respective claimant had filed application for compensation and even application under Section 140 of the Motor Vehicles Act claiming compensation under no fault liability. As the application being Civil Application No.12294 of 2001 was filed for seeking direction from this Court was placed before me for hearing. I have called for the record and proceedings from the tribunal and accordingly the record and proceedings is also available with the Court.

3. Mr.Patel learned advocate appearing on behalf of the opponent claimant has under instructions from his client has agreed for setting aside the award under challenge with a request that this Court may be directed the tribunal to decide the main claim application filed under Section 166 of the Motor Vehicles Act on merits.

4. In view of the stand taken by Mr.Patel under the instructions of his client original claimant, without expressing on the merits of the contentions raised in this appeal, the Court is inclined to allow the appeal and set aside the order under challenge and the tribunal is directed to examine the main claim application on its own merits and decide the same in accordance with law. Even while deciding the said application, the tribunal will not influenced about the order passed by the tribunal under section 140 of the Motor Vehicles Act which was set aside by this Court as agreed by the

respondent claimant. Accordingly, the award passed by the tribunal under no fault liability dated 7th May, 2001, is set aside. The appellant insurance company is entitled to make an application for withdrawal of the amount deposited by the insurance company. Accordingly appeal is allowed with no order as to costs.

(D.K. Trivedi, J.)

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